

KARIN G. PAGNANELLI (SBN 174763), kgp@msk.com
MARC E. MAYER (SBN 190969), mem@msk.com
DANIEL A. KOHLER (SBN 285501), dxk@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Plaintiffs Blizzard
Entertainment, Inc. and Valve Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Blizzard Entertainment, Inc., and Valve
Corporation,

Plaintiffs,

v.

Lilith Games (Shanghai) Co. Ltd., uCool, Inc.,
and uCool Ltd.,

Defendants.

CASE NO. 3:15-cv-04084-CRB

The Honorable Charles R. Breyer

**DECLARATION OF MARC E. MAYER
IN SUPPORT OF OPPOSITION OF
PLAINTIFFS BLIZZARD
ENTERTAINMENT, INC. AND VALVE
CORPORATION TO UCOOL, INC.'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

DATE: April 8, 2016

TIME: 10:00 a.m.

CTRM.: 6, 17th Floor

1 I, Marc E. Mayer, declare as follows:

2
3 1. I am an attorney at law, duly licensed to practice law in the State of California. I
4 am, through my professional corporation, a partner at the law firm Mitchell Silberberg & Knupp
5 LLP, counsel of record for Plaintiffs Blizzard Entertainment, Inc. and Valve Corporation
6 (collectively, "Plaintiffs") in this action. Unless otherwise stated, I have personal knowledge of
7 the following facts and, if called and sworn as a witness, could and would competently testify
8 thereto under oath.

9 2. On January 15, 2016, the Court held an initial case management conference in this
10 action. Following the case management conference, uCool's counsel advised me that uCool
11 intended to file a motion on the grounds that Valve's copyright registration for Dota 2 did not
12 permit it to maintain an action for any elements of Dota 2 that are also contained in DotA. On
13 February 4, 2016, I wrote an email to uCool's counsel stating that while Plaintiffs did not believe
14 that a separate registration for DotA was necessary, Plaintiffs would file such a registration in
15 order to avoid the time and expense of filing and opposing a motion based on what was, at most, a
16 curable defect. Attached hereto as **Exhibit 1** is a true and correct copy of my email.

17 3. On February 5, 2016, I caused to be filed with the United States Copyright Office
18 two Applications for Copyright Registration, one for DotA version 6.83 (the most recent version)
19 and one for DotA Beta 2 (the very first version released to the public). Attached hereto as **Exhibit**
20 **2** is a true and correct copy of the copyright registration for DotA version 6.83. Attached hereto as
21 **Exhibit 3** is a true and correct copy of the copyright registration for DotA Beta 2. Also, attached
22 hereto as **Exhibit 4** is a true and correct copy of the copyright application for DotA version 6.83,
23 which was a paper filing. Notably, the registration was issued on the electronic form, even though
24 the application was filed using the paper form.

25 4. On February 12, 2016, I caused to be filed an Application for Copyright
26 Registration for DotA 6.68, released in 2010. Attached hereto as **Exhibit 5** is a true and correct
27 copy of the copyright registration for DotA 6.68.

5. Attached hereto as **Exhibit 6** is a true and correct copy of a screen capture from the Copyright Office electronic registration form, reflecting the screen presented to a user to input the name of preexisting works. The language presented in this form cannot be modified in any manner.

6. Attached hereto as **Exhibit 7** is a true and correct copy of the paper form TX, which I obtained from the Copyright Office website.

7. Attached hereto as **Exhibit 8** is a true and correct copy of Copyright Office Circular 14, which I obtained from <http://copyright.gov/circs/circ14.pdf> on February 22, 2016.

8. Attached hereto as **Exhibit 9** is a true and correct copy of a web page from the United States Copyright Office Website titled “Help: Limitation of Claim,” which I caused to be captured from the URL <http://www.copyright.gov/eco/help-limitation.html>.

9. Attached hereto as **Exhibit 10** is a true and correct copy of the Declaration of Jacky Cheung, filed by *uCool* in the action *Lilith Games (Shanghai) Co., Ltd. v. uCool, Inc.*, Case No. 3:15-cv-01267, on July 17, 2015, apparently drafted by *uCool*’s counsel. I obtained this document from the Court’s ECF system. Paragraph 14 of the Declaration appears to contain two screen captures of Heroes Charge: one from August 2014 and one from July 2015.

10. Attached hereto as **Exhibit 11** are true and correct copies of pages from the “Heroes Charge Wiki” concerning the characters “War Chief” and “Rifleman.” These pages are available at the URLs http://heroes-charge.wikia.com/wiki/War_Chief and <http://heroes-charge.wikia.com/wiki/Rifleman>. The pages display an image of the Hero Card for “War Chief” that is different from the one attached to Mr. LaFond’s declaration (Ex. 18). This page also notes:

Garl is based on King Leoric, known as The Skeleton King, from the Diablo franchise (more specifically from Diablo III). In the original release of Heroes Charge, his old appearance looked similar to The Skeleton King from the first Diablo game. Garl’s DOT Arena counterpart is Leo, which further confirms that both characters are inspired on King Leoric.

11. Attached hereto as **Exhibit 12** is a true and correct copy of an excerpt from *uCool*’s responses to Plaintiffs’ first set of document requests. In response to Plaintiffs’ request that it produce “a copy of each and every version of HEROES CHARGE, including alpha and beta

1 versions of the game software, for any platform,” uCool lodged objections and has claimed that it
2 does not have possession of its game. To date, uCool has not produced a single copy of “Heroes
3 Charge.”

4 12. Attached hereto as **Exhibit 13** is a true and correct copy of a printout of a forum
5 posting titled “Regarding Artwork of Characters,” from uCool’s Heroes Charge forum, located at
6 <http://forum.ucool.com/showthread.php?13041-Regarding-artwork-of-heroes>.

7
8 I declare under penalty of perjury that the foregoing is true and correct.

9
10 Executed on this 1st day of March, 2016, at Los Angeles, California.

11
12 

13 _____
Marc E. Mayer